

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-26-C - ORDER NO. 2005-246(A)
MAY 27, 2005

IN RE: Joint Application of MCG Capital Corporation, IDS Telcom Corp. and IDS Telcom, LLC for Authority to Complete an Assignment of Assets and to Grant Authority to IDS Telcom Corp. to Provide Local Exchange and Interexchange Services and for Alternative and Flexible Regulation.) <u>AMENDED ORDER</u>) GRANTING) MOTION FOR) EXPEDITED REVIEW,) APPROVING THE) ASSIGNMENT OF) ASSETS, GRANTING) AUTHORITY TO) PROVIDE LOCAL) EXCHANGE AND) INTEREXCHANGE) SERVICES AND) ALTERNATIVE AND) FLEXIBLE REGULATION
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This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the necessity to amend Commission Order No. 2005-246 issued in the present docket. Order No. 2005-246 was issued May 23, 2005, on the Joint Application of MCG Capital Corporation, IDS Telcom Corp. and IDS Telcom, LLC which approved the assignment of assets and granted authority to IDS Telcom Corp. to provide local exchange and interexchange telecommunications services within the State of South Carolina. In Order No. 2005-246, IDS Telcom Corp. is erroneously stated as IDS Telecom Corp. and IDS Telcom, LLC is erroneously stated as IDS Telecom, LLC throughout the entirety of the Order. To correct the errors, the present Order is being

issued to reflect the appropriate verbiage. All other language of Order No. 2005-246 remains verbatim.

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Joint Application of MCG Capital Corporation (“MCG”) IDS Telcom Corp. (“New IDS”) and IDS Telcom, LLC (“Old IDS”) (collectively, the “Parties” or the “Applicants”) requesting the Commission’s approval of the assignment of assets and to grant authority to IDS Telcom Corp. to provide local exchange and interexchange telecommunications services in South Carolina, and for alternative and flexible regulation. The parties further requested expedited review of this matter.

MCG Capital Corporation is the ultimate owner of IDS Telcom Corp., and is formed under the laws of the State of Delaware with principal offices located in Arlington, Virginia. MCG is a publicly held financial services company that provides financing and advisory services to a variety of small and medium-sized companies throughout the United States. According to the Application MCG has ample managerial, technical, and financial qualifications to own and control New IDS and to oversee the operations currently conducted by Old IDS. In South Carolina, MCG currently holds an indirect controlling interest in NOW Communications, Inc. d/b/a Cleartel Communications (“NOW”) through MCG’s wholly owned portfolio investment company Cleartel Communications, Inc. NOW is currently authorized to operate in South Carolina as a competitive local exchange carrier and a reseller and facilities-based interexchange carrier pursuant to an Order issued in Docket No. 2003-193-C on October 2, 2003. NOW/Cleartel’s management will likewise manage the day to day affairs of New IDS. In

addition, MCG has previously held or currently holds interests in a number of telecommunications companies.

IDS Telcom, LLC (Old IDS) provides competitive telecommunications service mainly to residential and small to medium-sized business customers. Old IDS presently operates in South Carolina by virtue of its certificate to provide both local exchange telecommunications services and resold and facilities-based interexchange services.

Under the proposed transaction, New IDS and Cleartel Communications, Inc. will acquire the assets of Old IDS, including Old IDS's South Carolina certifications, its customer base, and all other assets associated with its telecommunications services operations ("Assets"). The Applicants request that New IDS be granted a Certificate of Public Convenience and Necessity, and be regulated subject to alternative regulation, as was granted by the Commission in Order Nos. 95-1734 and 96-55. Flexible regulation as per Order No. 98-165 in Docket No. 97-467-C is also requested, as is expedited consideration of the Joint Application.

The Commission's Docketing Department instructed MCG, New IDS, and Old IDS to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The Applicants complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

The South Carolina Telephone Coalition ("SCTC") filed a Petition to Intervene in this matter. New IDS and the SCTC entered into a Stipulation Agreement which is a part of the record in this matter. The Stipulation provides, in relevant part, that New IDS will only provide services to customers in non-rural areas of South Carolina. If it plans to

deviate from this restriction, New IDS agrees in the Stipulation to provide thirty (30) days notice to the incumbent LEC and this Commission.

The Applicants subsequently requested Expedited Review of the Joint Application pursuant to 26 S.C. Code of Regulations 103-820 and 103-840 for approval of its Application. The Applicants provided the Commission with verified testimony of Mr. Larry W. Seab, Director-External Affairs of IDS Telcom Corp. (New IDS), and documentation evidencing that New IDS possesses the financial, operational, and managerial resources required to provide high quality interexchange and local telecommunications service at competitive rates, terms and conditions.

Based upon the record before the Commission, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Applicants propose to complete a series of transactions through which New IDS, a subsidiary of MCG's portfolio investment company Cleartel Communications, Inc. will acquire all of the assets of Old IDS. New IDS is a recently created Delaware corporation. Pursuant to the agreement, New IDS will acquire all of the operations, customers, and other assets of Old IDS. As a result of the transaction, New IDS will replace Old IDS as the service provider operating in South Carolina. In order to allow New IDS to continue to provide service following the transactions, the Applicants request that this Commission allow Old IDS to transfer its existing South Carolina authorization to New IDS with the same conditions as previously granted to Old IDS. If the Commission determines that no transfer is possible, the Applicants propose that, in

the alternative, a second certification be granted to New IDS and that Old IDS's certificate be cancelled effective as of the close of the transaction. According to the Applicants, the transfer should be transparent to the customers.

2. The Commission finds that New IDS possesses the necessary experience, capability, and financial resources to provide intrastate interexchange and local exchange telecommunications in South Carolina. S.C. Code Ann. Section 58-9-280(B)(1).

3. The Commission further finds that New IDS possesses the tools necessary to provide communications services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2).

4. Under the terms of the Stipulation Agreement entered between the New IDS and the SCTC, New IDS has agreed to provide this Commission and the incumbent LEC with thirty (30) days notice prior to offering service in incumbent rural LEC's service areas.

5. The Commission finds sufficient facts to support New IDS's request to utilize General Accepted Accounting Practices ("GAAP") to maintain its books of accounts.

6. The Commission additionally finds sufficient facts to support New IDS's request for a waiver of the requirement under Regulation 103-610 that all records must be kept in South Carolina.

7. The Commission finds that the provision of local and intrastate interexchange service by New IDS will neither adversely impact the availability of local exchange service nor adversely impact the public interest and further that New IDS will

support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(3), (4) & (5).

CONCLUSIONS OF LAW

1. The request for Expedited Review is granted on the basis of the facts as stated in this Order and under the authority of Commission Regulations 103-820 and 103-840.

2. Based on the above findings of fact, the Commission approves and hereby orders the transfer of assets in South Carolina of Old IDS to New IDS and further determines that the Certificate of Public Convenience and Necessity of Old IDS should be transferred to New IDS to provide local exchange telecommunications and intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, 800 inbound service, intraLATA direct dialed services or any other services authorized for resale by tariffs of carriers approved by the Commission. Old IDS's authority to operate as a telecommunications carrier in South Carolina shall cease at the completion of the transactions.

3. The terms of the Stipulation Agreement between New IDS and the SCTC are hereby approved and adopted.

4. New IDS shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. New IDS's local

telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for New IDS's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, New IDS's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

5. The Commission adopts a rate design for New IDS for its residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

6. New IDS shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. New IDS shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for

reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of New IDS's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

7. With respect to New IDS's interexchange business service offerings, consumer card, operator services, and customer network offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to New IDS also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of this Order and this modification also apply to New IDS.

8. If it has not already done so by the date of issuance of this Order, New IDS shall file its revised interexchange tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

9. New IDS is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

10. With regard to the New IDS's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

11. New IDS shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If New IDS changes underlying carriers, it shall notify the Commission in writing.

12. With regard to the origination and termination of toll calls within the same LATA, New IDS shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX inter-LATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 CFR 51.209). New IDS shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

13. New IDS is required to file regular reports concerning their operations. New IDS shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. Both the annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, New IDS shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing annual reports and gross receipts reports. The proper form for filing annual financial information in the annual reports can be found at the Commission's website at www.psc.state.sc.us/forms. The title of the forms which should be used to file the annual financial information are the "Annual Report for Competitive Local Exchange Carriers" and the "Annual Information on South Carolina Operations for Interexchange Companies and AOS." New IDS shall file its annual reports by April 1st of each year. Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may be found on the Commission's website at www.psc.state.sc.us/forms. Additionally, pursuant to the Commission's regulations, New IDS shall file a "CLEC Service Quality Quarterly Report" with the Commission. The proper form for this report can be found at the Commission's website at www.psc.state.sc.us/forms/default.htm.

14. New IDS shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, New IDS shall provide to the Commission in writing the name of the

authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. New IDS shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, New IDS shall promptly notify the Commission in writing if the representatives are replaced.

15. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers and incumbent local exchange carriers were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001 and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. New IDS must comply with applicable mandates. For complete

information on compliance with this FCC and Commission requirement, go to the Commission's website at www.psc.state.sc.us/forms.

16. New IDS is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

17. New IDS requests a waiver of Reg. 103-610, which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The Commission finds New IDS's requested waiver reasonable and understands the difficulty presented to New IDS should the waiver not be granted. The Commission therefore grants the requested waiver that New IDS be allowed to maintain its books and records at its principal headquarters. However, New IDS shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and New IDS shall promptly notify the Commission if the location of its books and records changes.

18. New IDS also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, New IDS maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). Moreover, New IDS asserts that because it utilizes GAAP, the Commission will have a reliable means by which to evaluate New IDS's operations and assess its financial fitness. Accordingly, New IDS

hereby requests an exemption from the USOA requirements. We grant New IDS's request for the reasons stated above.

19. New IDS is further required to comply with, in accordance with its Application and under Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs New IDS to contact the appropriate authorities regarding 911 service in the counties and cities where the company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning local telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office of the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing local telephone services in South Carolina, New IDS shall contact the 911 coordinator in each county (and city where the city has its own 911 system) and shall provide information regarding the Company's operations as required by the 911 system.

20. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each

telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

21. The Applicants shall notify the Commission when the transaction is closed and Old IDS shall submit to the Commission a request for cancellation of its Certificate of Public Convenience and Necessity.

22. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice-Chairman

(SEAL)